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Colorado General Assembly

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MEMORANDUM

TO: John Caldara and Mike Krause
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 4, 2018
SUBJECT: Proposed initiative measure 2017-2018 #174, concerning a flat Colorado income tax rate

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To preserve Colorado's flat tax rate, contingent upon the passage of another initiated measure that would create a tiered tax rate structure based on income.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. Proposed section 39-22-5002 (1) indicates that proposed part 50 shall not take effect "[i]f no measure passes in the 2018 General Election that repeals the portion of section 20 (8)(a) of article X of the Colorado constitution requiring a single state income tax rate[...]" In this circumstance, do the proponents intend that part 50 become part of the Colorado Revised Statutes with no practical effect, or that the Revisor of Statutes not add it to the statutes at all?
3. Proposed section 39-22-5002 (2) states that the proposed part 50 controls in case of conflict between the proposed part 50 and any other provision of article 22. What happens if similar language is added to the conflicting provision in the future?
4. Is it the proponents' intent that this measure only take effect if a particular measure that has been proposed for the 2018 ballot is approved by the voters? For example, would it apply if the people were to approve Initiative #165 or #166 regarding policy changes pertaining to state income taxes? Is it the proponents' intent that it would it apply to any other specific referred or initiated measures?
5. Would a measure containing variable rates take precedent over the proposed initiative if the governor signs the proclamation for it later in time? Would it take precedent if it is passed by a larger vote of the people?
6. Proposed subsections 39-22-5003 (1)(a) and (1)(b) both refer to cases where "any income tax rate that would be imposed" pursuant to section 39-22-104 meets certain criteria. Do the proponents intend that these subsections apply if *all* income tax rates that would be imposed pursuant to section 39-22-104 meet the criteria? If so, would the proponents consider changing "any" to "all" in subsections (1)(a) and (1)(b)?

7. Would the provisions of proposed section 39-22-5003 apply if a variable rate were enacted in or moved to a section other than section 39-22-104?
8. Proposed subsections 39-22-5003 (1)(a), (1)(b), and (1)(c) each require that a certain tax rate be imposed "on the entire federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust." The following comments and questions concern this provision:
 - a. As proposed, the tax rates in these subsections would apply to portions of federal taxable income that would otherwise be tax deductible under other provisions of article 22. Is this the proponents' intent?
 - b. As proposed, the tax rates in these subsections would not apply to income exempt from the federal income tax that would otherwise be taxable in Colorado pursuant to other provisions of article 22. Is this the proponents' intent?
 - c. Do the tax rates in the proposed part 50 negate Colorado income tax credits that would otherwise be allowed pursuant to other provisions of article 22? Could the state enact an income tax credit in an amount that is indexed to a taxpayer's income? Would the proponents consider the addition of language clarifying this issue?
9. Proposed subsection 39-22-5003 (1)(b) appears to apply to cases in which voters authorize multiple state income tax rates, all of which are higher than 4.63 percent. In a situation where voters enact a tax rate of 5 percent on some federal taxable income and a tax rate of 7 percent on other federal taxable income, does the initiative apply a tax rate of 7 percent on all federal taxable income?
10. Some initiatives for which the Title Board has issued titles raise tax rates on certain taxpayers while providing tax credits to others. For some of these initiatives, the revenue increases and reductions mostly offset one another. The following comments and questions concern a circumstance in which this proposed measure is enacted alongside a measure like that described:
 - a. In such a circumstance, would the income tax credits in the other measure still become available?

- b. In such a circumstance, do the proponents intend that this measure significantly reduce state revenue relative to a circumstance in which the other measure is enacted without this measure?

11. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.

- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 39-22-104".
2. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Revised Statutes.

3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.

Per standard drafting practice, it is not necessary to capitalize more general terms such as "governor" or "general election", or to capitalize citations such as "article X".

4. Each part in the Colorado Revised Statutes includes a part heading (displayed in ALL CAPS) that describes generally the subject found in the part. Would the proponents like to name the new part 50? For example:

"SECTION 2. In Colorado Revised Statutes, add part 50 to article 22 of title 39 as follows:

PART 50

COLORADO FLAT TAX ACT

39-22-5001. Short title. THE SHORT TITLE OF THIS PART 50 IS...".